Corrected 2/10/03
NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AKRAM MOHAMMAD ZAMANI, et al., Petitioners, v. IMMIGRATION & NATURALIZATION SERVICE, Respondent.	No. 01-71234 INS Nos. A71-623-401/ 402/403/404/406/407/408 MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted October 8, 2002
San Francisco, California

Before: KLEINFELD and RAWLINSON, Circuit Judges, and REA,** District Judge.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The Honorable William J. Rea, Senior United States District Judge for Central California, sitting by designation.

Akram Mohammad Zamani ("Zamani"), a native and citizen of Afghanistan, and his wife and children, petition for review of the Board of Immigration Appeals ("BIA") finding that they failed to establish statutory eligibility for asylum and/or withholding of deportation because they were firmly resettled in Germany prior to their arrival in the United States. We review BIA findings under the deferential "substantial evidence" standard and will uphold BIA findings "unless the evidence compels a contrary conclusion." See Hernandez-Montiel v. INS, 225 F.3d 1084, 1090 (9th Cir. 2000).

We held in Cheo v. INS, 162 F.3d 1227, 1229 (9th Cir. 1998), that "[a] duration of residence in a third country sufficient to support an inference of permanent resettlement in the absence of evidence to the contrary shifts the burden of proving absence of resettlement to the applicant." Here, the BIA did not err in finding that Petitioners had firmly resettled, because they had obtained some form of "permanent residence" or "some type of permanent resettlement." See 8 C.F.R. § 208.15. Significantly, Petitioners do not make a showing sufficient to establish that the conditions were "so substantially and consciously restricted" by the authorities in Germany that they were not in fact resettled. See 8 C.F.R. § 208.15 (b).

The record supports the finding of the BIA, that Petitioners firmly resettled in Germany. Because substantial evidence supports the findings of the BIA, the petition should be denied. INS v. Elias-Zacarias, 502 U.S. 478, 481 (1992) (upholding a BIA decision if supported by reasonable, substantial and probative evidence in the record).

Petition DENIED.